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Supreme Court No. 90509-6

Court of Appeals No. 70592-0-I

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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ROCIO TRUJILLO,

*Appellant,*

v.

NORTHWEST TRUSTEE SERVICES, INC.

*Respondent,*

and

WELLS FARGO BANK, N.A.

*Defendant.*

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**STATEMENT OF SUPPLEMENTAL AUTHORITY  
OF RESPONDENT NORTHWEST TRUSTEE SERVICES, INC.  
PURSUANT TO R.A.P. 10.8**

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Joshua S. Schaer, WSBA No. 31491  
RCO Legal, P.S.  
Attorneys for Respondent Northwest  
Trustee Services, Inc.  
13555 S.E. 36<sup>th</sup> St., Ste. 300  
Bellevue, WA 98006  
(425) 457-7810

 ORIGINAL

Pursuant to R.A.P. 10.8, Respondent Northwest Trustee Services, Inc. hereby submits the attached additional authority for the Court's consideration in this case:

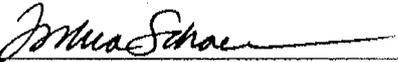
1. *Meyer v. US Bank, N.A. et al.*, Case No. 14-00297-RSM (W.D. Wash. Jun. 9, 2015), "Order Denying Motion for Rehearing," stating in relevant part:

a) "[u]nlike the trustee in *Lyons*, which was confronted with a host of 'possible issues' with the beneficiary's right to foreclose necessitating... an investigation, NWTS was confronted with no such irregularities in this case." *Id.* at \*3.

b) "[t]echnical violations of the DTA do not constitute unfair or deceptive acts or practices actionable under the CPA absent a showing of materiality or prejudice." *Id.* at \*5.

DATED this 10<sup>th</sup> day of June, 2015.

**RCO LEGAL, P.S.**

By:   
Joshua S. Schae, WSBA #31491  
Of Attorneys for Respondent  
Northwest Trustee Services, Inc.

**Declaration of Service**

The undersigned makes the following declaration:

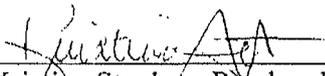
1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action; and I am competent to be a witness herein.
  
2. On June 10, 2015 I caused a copy of the **Statement of Supplemental Authority of Respondent Northwest Trustee Services, Inc. Pursuant to R.A.P. 10.8** to be served in the following in the manner noted below:

Matthew Geyman Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, WA 98104  Attorneys for Appellant Trujillo	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Abraham K. Lorber Lane Powell, PC 1420 Fifth Ave., Suite 4200 Seattle, WA 98101-2338 Attorneys for Respondent Wells Fargo Bank, N.A.	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Sheila M. O'Sullivan Northwest Consumer Law Center 520 E. Denny Way Seattle, WA 98122	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Melissa A. Huelsman Law Offices of Melissa A. Huelsman PS 705 Second Ave., Suite 601 Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile

Lisa M. von Biela Northwest Justice Project 401 Second Ave. S., Suite 407 Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Richard Llewelyn Jones Kovac & Jones, PLLC 1750 112 <sup>th</sup> Ave. NE, Suite D-151 Bellevue, WA 98004	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Ha Thu Dao Grand Central Law, PLLC 787 Maynard Ave. S. Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Lance E. Olsen McCarthy & Holthus 108 1 <sup>st</sup> Ave. S., Suite 300 Seattle, WA 98104-2104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile
Benjamin Roesch Leilani Fisher Assistant Attorneys General Consumer Protection Division 800 Fifth Ave., Suite 2000 Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed this 10<sup>th</sup> day of June, 2015.

  
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 Kristine Stephan, Paralegal

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PETER J. MEYER AND SHAREE L.  
MEYER, husband and wife;

Appellees,

v.

U.S. BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR STRUCTURED ASSET  
SECURITIES CORPORATION MORTGAGE  
PASS-THROUGH CERTIFICATES, 2006-  
GE1, a federally chartered national bank;  
AMERICA'S SERVICING COMPANY, a  
Division of WELLS FARGO NA d/b/a WELLS  
FARGO HOME MORTGAGE, a National  
Bank; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware corporation; and DOE  
DEFENDANTS 1-10,

Defendants,

and

NORTHWEST TRUSTEE SERVICES, INC.,

Appellant.

Case No. 14-00297RSM

USBC, WAWB 14-S002

BK No. 12-01630-KAO

ORDER DENYING MOTION FOR  
REHEARING

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22

This matter comes before the Court upon Motion for Rehearing by Appellees Peter J.  
Meyer and Sharee L. Meyer, husband and wife (collectively, the "Meyers"). Dkt. # 36. Pursuant to

01 Rule 8022 of the Federal Rules of Bankruptcy Procedure, the Meyers move the Court for a  
02 rehearing on its decision issued April 10, 2015, reversing the Bankruptcy Court's post-trial Order  
03 and Judgment (Dkt. # 35). The Court ordered briefing in response and reply to the Meyers'  
04 Motion. Dkt. ## 37, 38, 39. Having considered the parties' briefs, the underlying Order, and the  
05 remainder of the record, the Court now denies the Meyers' request for a rehearing.

06 While Rule 8022 does not specify the standard for ruling on a petition for rehearing, the  
07 parties agree that the standard of review applicable to Federal Rule of Appellate Procedure 40  
08 applies. *See* Dkt. # 36, p. 2; Dkt. # 38, p. 2. The Court is in accord. *See In re Fowler*, 394 F.3d  
09 1208, 1214-15 (9th Cir. 2005) (affirming district court's application of FRAP 40 standards to  
10 review of petition for hearing); *Kosmala v. Inhor (In re Hessco Indus., Inc.)*, 295 B.R. 372, 375  
11 (B.A.P 9th Cir. 2003) (finding it appropriate to look to FRAP 40 for guidance in reviewing petition  
12 for hearing).

13 Under Appellate Rule 40, a party seeking rehearing must "state with particularity each  
14 point of law or fact that the petitioner believes the court has overlooked or misapprehended and  
15 must argue in support of the petitioner." Fed. R. App. Pro. 40(a)(2). A petition for rehearing is not  
16 a means to reargue a party's case but is instead designed to ensure that the appellate court  
17 "properly considered all relevant information in rendering its decision." *In re Hessco Indus.*, 295  
18 B.R. at 375; *see also Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 985, 990 (8th Cir. 2010)  
19 (internal quotation omitted) (A petition for rehearing should "direct the Court's attention to some  
20 material matter of law or fact which it has overlooked in deciding a case, and which, had it been  
21 given consideration, would probably have brought about a different result.").

22

01 The Court finds that the standard for rehearing has not been met in this case. To the  
02 contrary, Appellees largely reargue the same issues briefed and resolved on appeal. In doing so,  
03 Appellees fail to show that either points of law or fact require a different result.

04 First, the Meyers argue that the Court relieved Appellant Northwest Trustee Services, Inc.  
05 (“NWTS”) from its duties of independence and good faith under Washington law. The Court  
06 disagrees. Washington’s Deed of Trust Act (“DTA”) provides that the “trustee or successor trustee  
07 shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an  
08 interest in the property subject to the deed of trust.” RCW 61.24.010(3). While the trustee owes the  
09 borrower, beneficiary, and grantor a duty of “good faith,” RCW 61.24.010(4), this duty is met  
10 where the trustee “‘adequately inform[s]’ itself regarding the purported beneficiary’s right to  
11 foreclose, including, at a minimum, a ‘ cursory investigation, ’” whereby it “investigate[s] possible  
12 issues using its independent judgment.” *Lyons v. U.S. Bank Nat. Ass’n*, 181 Wash. 2d 775, 787,  
13 336 P.3d 1142 (2014), quoting *Walker v. Quality Loan Serv. Corp. of Wash.*, 176 Wn. App. 294,  
14 320, 308 P.3d 716 (Wash. Ct. App. 2013). Unlike the trustee in *Lyons*, which was confronted with  
15 a host of “possible issues” with the beneficiary’s right to foreclose necessitating such an  
16 investigation, NWTS was confronted with no such irregularities in this case. *See id.* at 787-88  
17 (“The conflict over the actual beneficiary was brought to the attention of NWTS..., but there is no  
18 evidence that anyone at NWTS investigated this conflict....”).

19 Further, absent an independent violation of the trustee’s duty of good faith, Washington  
20 law permits a trustee to rely on a declaration made by the beneficiary under penalty of perjury as  
21 sufficient proof that the beneficiary is the owner of the promissory note. RCW  
22 61.24.030(7)(a)-(b); *see also Lyons*, 181 Wash.2d at 790. The trustee need only independently

01 verify the veracity of the declaration if there is an “indication that [it] might be ineffective.” *Id.*;  
02 *see also Bavand v. OneWest Bank FSB*, 587 Fed.Appx. 392, 394 (9th Cir. 2014) (holding that  
03 trustee complied with its statutory obligations by relying on a beneficiary declaration).

04         The Meyers argue for the first time through the instant Motion that the beneficiary  
05 declaration on which NWTs relied was inherently ambiguous and that NWTs was accordingly  
06 required to independently investigate its veracity. Under the DTA, a beneficiary declaration must  
07 merely attest that the beneficiary is the “actual holder of the promissory note.” RCW  
08 61.24.030(7)(a). In the underlying memorandum decision in this case, Judge Overstreet  
09 determined that the beneficiary declaration at issue “states that U.S. Bank, as trustee for GEL2,  
10 was the holder of the Note.” MD at p. 10. The declaration would thus fully accord with the  
11 statutory provision. Nonetheless, the Meyers now assert that the full language of the beneficiary  
12 declaration reads as follows:

13             U.S. Bank, N.A., as Trustee for Structured Asset Securities Corporation Mortgage  
14             Pass-Through Certifications 2006-GEL2 is the actual holder of the promissory note  
              or other obligation evidencing the above-reference loan *or has the requisite*  
              *authority* under CW 61.A.3-301 to enforce such obligations.

15  
16 Dkt. # 39, p. 3, n. 2 (citing trial exhibit P-5) (emphasis added). This language parallels that  
17 determined by the *Lyons* court to be ambiguous as to whether the beneficiary (here, U.S. Bank)  
18 was the note’s holder at the time of foreclosure or merely a nonholder in possession entitled to  
19 enforce. *See Lyons*, 181 Wash.2d at 790.

20         The flaw in the Meyers’ argument is that this technical violation of the DTA, even if true,  
21 would not in itself support a claim for damages under Washington’s Consumer Protection Act  
22 (“CPA”). Rather than locating a CPA violation by virtue of the trustee’s reliance on an ambiguous  
declaration, the *Lyons* court remanded to allow NWTs to furnish proof that the attesting

01 beneficiary was actually the owner of the note in question. *Lyons*, 181 Wash.2d at 792. Here, the  
02 trial court made precisely this determination at trial, concluding that NWTs had “successfully  
03 proved” that “as of the commencement of the foreclosure, U.S. Bank, as trustee for GEL2, was the  
04 holder of the Note and that GEL2 was the owner of the Note.” MD at p. 20. Unlike in *Lyons*, there  
05 is no question in this case as to the beneficiary’s actual authority to foreclose.

06 Further, as the Court stated in its prior Order, technical violations of the DTA do not  
07 constitute unfair or deceptive acts or practices actionable under the CPA absent a showing of  
08 materiality or prejudice. Whether an alleged act is unfair or deceptive presents a question of law.  
09 See *Walker*, 176 Wash.App. at 318. An act or practice satisfies the first prong of a CPA claim if it  
10 “has a capacity to deceive a substantial portion of the public.” *Hangman Ridge Training Stables,*  
11 *Inc v. Safeco Title Ins. Co.*, 105 Wash.2d, 778, 785-86, 719 P.2d 531 (1986). “Implicit in the  
12 definition of ‘deceptive’ under the CPA is the understanding that the practice misleads or  
13 misrepresents something of material importance.” *Walker*, 176 Wash.App. at 318, quoting  
14 *Holiday Resort Community Ass’n v. Echo Lake Associates, LLC*, 134 Wash.App. 210, 226, 135  
15 P.3d 499 (Wash. Ct. App. 2006). A showing of prejudice is also required before a court will set  
16 aside a trustee sale, even in the face of technical violations of the DTA. See *Bavand v. OneWest*  
17 *Bank, FSB*, 587 Fed.Appx. 392, 394-95 (citing *Amresco Independence Funding, Inc. v. SPS*  
18 *Properties, LLC*, 129 Wash.App. 532, 119 P\_3d 884 (2005)).

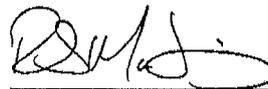
19 For these reasons, courts routinely dismiss CPA claims predicated on DTA violations  
20 where a plaintiff fails to demonstrate that her interests were prejudiced by a material failure to  
21 comply with statutory mandates. See, e.g., *Cagle v. Abacus Mortg., Inc.*, 2014 WL 44012136, \*4  
22 (W.D. Wash. 2014) (dismissing CPA claim where Plaintiff “failed to allege any prejudice

01 resulting from MERS' role"); *Vawter v. Qual. Loan Serv. Corp. of Wash.*, 2010 WL 5394893, \*6  
02 (W.D. Wash. 2010) (dismissing CPA claim where alleged DTA violation "could not be said to be  
03 'of material importance,'" because to do otherwise would effect a "misguided elevation of form  
04 over substance"). As this Court has similarly found that the alleged DTA violations were  
05 immaterial and caused no prejudice to the borrowers, the impugned acts are insufficient as a matter  
06 of law to support a CPA claim.

07 Finally, the Meyers fault the district court for overturning the trial court's factual findings  
08 regarding causation and damages. In order to prevail under the CPA, "[a] plaintiff must establish  
09 that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an  
10 injury." *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wash.2d  
11 59, 83, 170 P.3d 10 (2007). The Meyers provide no facts or authority capable of showing that this  
12 Court erred in finding that the damages awarded were either non-compensable under the CPA or  
13 that NWTS' alleged DTA violations were not their but-for cause. As the Court remains persuaded  
14 that the trial court's findings as to causation are unsupported, whether reviewed for clear error or  
15 de novo, the Meyers' CPA claim must fail.

16 Accordingly, for the above-stated reasons, the Court hereby ORDERS that Appellees'  
17 Motion for Rehearing (Dkt. # 36) is DENIED.

18 DATED this 9 day of June 2015.

19  
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21 RICARDO S. MARTINEZ  
22 UNITED STATES DISTRICT JUDGE

## OFFICE RECEPTIONIST, CLERK

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*Rocio Trujillo (Appellant) v. Northwest Trustee Services, Inc. (Respondent), et al.*  
Supreme Court No. 90509-6  
Court of Appeals No. 70592-0-1  
Filed by: Joshua Schaer  
WSBA #31491  
425-457-7810  
[jschaer@rcolegal.com](mailto:jschaer@rcolegal.com)

Please file the attached **Statement of Supplemental Authority of Respondent Northwest Trustee Services, Inc. Pursuant to R.A.P. 10.8.**

If there are any questions, please contact us. Thank you.

**Kristi Stephan**  
Senior Litigation Paralegal

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